Filed 7/12/19 In re D.E. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.E., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. V.S., Defendant and Appellant.	E072021 (Super.Ct.No. J272114) OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Affirmed.

Valerie Ross for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant V.S. (mother) appeals from an order summarily denying her Welfare and Institution Code section 388[1] petition for modification filed in juvenile dependency proceedings after family reunification services were terminated as to her youngest son, D.E. (the child). She argues that the juvenile court abused its discretion when it failed to order a hearing on the petition to determine whether the child should be placed with her under family maintenance services. We will affirm.

BACKGROUND

In July 2017, mother was arrested for driving under the influence of narcotics with the child, then five months old, in the car. She was pregnant at the time. San Bernardino County Children and Family Services (CFS) took the child and his 11-year-old maternal half brother into protective custody and filed juvenile dependency petitions on their behalf. The half brother's petition eventually resulted in placement with his father with family law orders from which no appeal has been taken.

As to the child, the juvenile court sustained the petition on account of his parents' substance abuse, domestic violence issues, and his presumed father's[2] inability to provide or care for him. (§ 300, subd. (b)(1).) The court adjudged the

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Father is not a party to this appeal.

child a dependent of the court, removed him from his parents, and placed him in foster care. It ordered family reunification services for both parents.

A team meeting was held on March 9, 2018. CFS added a coparenting class to the case plan after the parents reported they were not in a relationship but wished to learn how to cooperatively raise the child in the future. Mother admitted she had not been telling the truth to CFS about her relationship with the father and "several other things," out of fear that she would not be permitted to reunify with the child.

CFS prepared a report in anticipation of the 12-month review hearing scheduled for August 24, 2018, recommending return of the child to mother's care under family maintenance. Mother had completed all aspects of her service plan. She had moved into the maternal grandmother's home and had a job. CFS cautioned that conditions still existed, which would "justify initial assumption of jurisdiction" if supervision were withdrawn. Father had not completed his case plan, and CFS recommended termination of services as to him.

On August 1, 2018, mother revealed to the social worker that after the child had been removed, father beat her up causing her to lose the baby she had been carrying. She disclosed that, contrary to her earlier denials, and in spite of being reminded several times about the importance of being truthful about her relationship with the father in view of their domestic violence issues, she and the father had remained in a relationship throughout the dependency proceedings and had just recently broken up. She said that if she did not have the child for an overnight visit,

she would spend the night with father at his home, which she described as "basically a drug house." Mother and father agreed that she would complete her case plan and, once the child was returned to her, father would join the family. Mother decided to divulge the information because father told her he was going to sabotage her reunification with the child by showing the court her text messages. Mother decided it would be better if she told the social worker before he did.

In response to mother's revelations, the social worker filed an additional information to the court on August 10, 2018, recommending termination of services and a permanent placement living arrangement with a plan of adoption. The court reduced mother's visitation and continued the 12-month review hearing to September 24, 2018.

The social worker filed a further additional information to the court on September 12, 2018, reporting that mother said the worker got the information wrong. Mother complained she never agreed to do all the case plan and then allow father to participate in the family without completing his services. Mother also reported, and she later testified at the 12-month review hearing, that she and the father had not remained together during the entire case but had been on-again, off-again. She had not been sure if being in a relationship with father was permissible because the "line was blurred" and she received "mixed signals" from the social worker when they were referred to the coparenting classes, which she described as "couple's counseling."

At the contested September 2018 review hearing, the juvenile court terminated services upon a finding both parents exhibited an extreme lack of benefit from them. It also found that the child's best interest would not be served by setting a permanent plan selection hearing, and it instead ordered a specific goal of permanent placement with adoption. Mother did not file an appeal from that order.

In January 2019, mother filed a section 388 petition seeking to replace the court's September 2018 order with a new one that placed the child in her home with provision of family maintenance services. Her petition was bottomed on a copy of the CFS referral of the parents to a therapist for the purpose of working on cooperative coparenting. Mother believed the referral signaled CFS's desire that the parents remain together and corroborated her testimony at the September 2018 hearing that she was never told she could not be with the father. She believed that granting her petition was in the child's best interest because he was very bonded to her.

The court denied mother's petition without a hearing. It noted the petition did not state new evidence or change of circumstances, the proposed change of order did not promote the child's best interest, and the petition was an attempt to re-argue what was already presented at the contested 12-month review hearing. Mother appealed.

DISCUSSION

Mother argues the juvenile court abused its discretion when it failed to grant a hearing on the modification petition because the CFS referral of the parents to the counselor submitted with the petition was new evidence that corroborated her position at the 12-month review hearing that she believed having contact with the father was what CFS wanted her to do. Her claim lacks merit.

Subdivision (a)(1) of section 388 provides in relevant part that a parent of a child who is a dependent of the juvenile court may, upon grounds of new evidence, petition the court to modify or set aside a previous order made by that court. The term "new evidence" in section 388 refers to material information a duly diligent petitioner would not have been able to present during the hearing at which the order that is the subject of the petition was issued. (*In re H.S.* (2010) 188 Cal.App.4th 103, 108-110.)

In order to be entitled to a hearing on a section 388 petition, the parent must make a prima facie showing not only of new evidence but also how the proposed modification of the prior order might advance the child's best interest. (§ 388, subs. (a)(1) & (d); Cal. Rules Court, rule 5.570(d); *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157 (*G.B.*).) If, as here, family reunification services have been terminated, a parent's petition seeking further reunification efforts must also make a prima facie showing that resumption of services might advance the child's need for permanency

and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re J.C.* (2014) 226 Cal.App.4th 503, 527.)

The petition is to be liberally construed in favor of its sufficiency. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.) The juvenile court may consider the entire procedural and factual history of the case when deciding whether the petition makes the necessary showing. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.) The prima facie requirement is not met unless the petition contains facts that, if established at a hearing, would provide sufficient support for granting the petition. (*Ibid.*)

We review a juvenile court's summary denial of the petition for abuse of discretion. (*G.B.*, *supra*, 227 Cal.App.4th at p. 1158.) We will not disturb that court's decision unless we find that it exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 705-706.)

In this case, the petition was intended to be used to corroborate mother's testimony at the review hearing that CFS did not tell her she could not be in a relationship with father and, in fact, that it wanted mother and father to be together. Mother does not offer an explanation why she could not have with reasonable diligence produced that evidence at the hearing. The referral was made by CFS in March 2018, with counseling to begin in April and continue through August. The contested 12-month review hearing took place in September. Because the purpose

of the petition was to bolster an argument already considered and rejected by the juvenile court in the course of the review hearing with evidence available at the time of that hearing, that court's summary denial was not an abuse of discretion.

We note that, even if the referral was new evidence, we would nevertheless affirm the summary denial of mother's petition because the juvenile court found that the proposed change of order would not further the child's best interest. Mother did not challenge that finding.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

MILLER
J.

FIELDS
J.